

**U.S. Department of Agriculture  
Food and Nutrition Service  
Administrative Review  
Alexandria, VA 22302**

Hamdar Inc.,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>Case Number: C0190888</b>
	)	
Retailer Operations Division,	)	
	)	
Respondent.	)	
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**FINAL AGENCY DECISION**

The U.S. Department of Agriculture, Food and Nutrition Service (FNS), finds that there is sufficient evidence to support the decision by the Retailer Operations Division to impose a permanent disqualification against Hamdar Inc. (hereinafter Appellant) from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP).

**ISSUE**

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(a), (c) and (e)(1)(i) in its administration of the SNAP, when it imposed a permanent disqualification against Appellant on July 28, 2016.

**AUTHORITY**

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

**CASE CHRONOLOGY**

In a letter dated June 23, 2016, the Retailer Operations Division charged the Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred during the months of December 2015 through May 2016. The letter noted that the penalty for trafficking is permanent disqualification as provided

by 7 CFR § 278.6(e)(1). The letter also noted that the Appellant could request a trafficking civil money penalty (CMP) in lieu of a permanent disqualification within ten days of receipt under the conditions specified in 7 CFR § 278.6(i).

Appellant, through counsel, responded to the charge letter on July 5, 2016, and on July 20, 2016, after having received two extensions of time, but neither response contained evidence to be considered in support of the CMP. The Retailer Operations Division notified Appellant in a letter dated July 28, 2016, that the firm was permanently disqualified from participation as an authorized retailer in SNAP in accordance with Section 278.6(c) and 278.6(e)(1) for trafficking violations. This determination letter also states that Appellant's eligibility for a trafficking civil money penalty according to the terms of Section 278.6(i) of the SNAP regulations was considered. However, the letter stated ". . . you are not eligible for the CMP because you failed to submit sufficient evidence to demonstrate that your firm had established and implemented an effective compliance policy and program to prevent violations of the Supplemental Nutrition Assistance Program."

By letter dated August 4, 2016, Appellant, through counsel, appealed the Retailer Operations Division's assessment and requested an administrative review of this action. Subsequent correspondence dated September 6, 2016, was received from Appellant.

#### **STANDARD OF REVIEW**

In appeals of adverse actions, Appellant bears the burden of proving by a preponderance of the evidence that the administrative actions should be reversed. That means Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

#### **CONTROLLING LAW**

The controlling statute in this matter is contained in the Food and Nutrition Act of 2008, as amended, 7 U.S.C. § 2021 and § 278 of Title 7 of the Code of Federal Regulations (CFR). Part 278.6(e)(1)(i) establishes the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern in the event that personnel of the firm have engaged in trafficking of SNAP benefits.

7 CFR § 278.6(e)(1)(i) reads, in part, "FNS shall . . . [d]isqualify a firm permanently if . . . personnel of the firm have trafficked as defined in § 271.2." Trafficking is defined, in part, in 7 CFR § 271.2, as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . ."

7 U. S. Code § 2021(a)(2) states, “Regulations promulgated under this chapter shall provide criteria for the finding of a violation of, the suspension or disqualification of and the assessment of a civil penalty against a retail food store or wholesale food concern on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, or *evidence obtained through a transaction report under an electronic benefit transfer system.*” (Emphasis added.)

In addition, 7 CFR § 278.6(a) states, in part, “FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system . . .*” (Emphasis added.)

### **SUMMARY OF THE CHARGES**

The issue in this review is whether, through a preponderance of evidence, it is more likely true than not true that the questionable transactions were the result of trafficking. The charges on review were based on an analysis of SNAP EBT transaction data during a six month period of December 2015 through May 2016. This involved three patterns of EBT transaction characteristics indicative of trafficking:

1. Multiple transactions were made from individual benefit accounts in unusually short time frames.
2. An excessive number of manual key-entered EBT transactions were made from the business.
3. Excessively large purchase transactions were made from recipient accounts.

### **STORE BACKGROUND**

The FNS initially authorized the Appellant business on May 12, 2010, and the business is classified as a convenience store. The file indicates that in reaching a disqualification determination, Retailer Operations Division considered information obtained during a May 20, 2016, store visit conducted by a FNS contractor to observe the nature and scope of the firm’s operation, stock, and facilities. This information was then used to ascertain if there were justifiable explanations for the EBT transactions at Appellant’s store that formed patterns indicative of trafficking. The store review summary documented the following store size, description, and characteristics:

- The business was a typically stocked ethnic Indian/American convenience store offering a limited assortment of the dried vegetables, spices, and snack items typically found in Indian markets as well as a limited number of bulk items such as whole wheat flour, flour, sugar, rice, and cooking oils in addition to the typical products found in mainstream American convenience stores.

- The contractor estimated the area within the store dedicated to SNAP eligible food items to be about 900 square feet with no food stored in a storage area out of public view. The business also had areas devoted to the sale of SNAP ineligible items and contained a full-service community/retail pharmacy accepting both Medicaid and Child Health Plus insurance.
- There were no shopping carts and approximately 12 handheld baskets for customer use seen during the visit.
- There was one checkout counter with an area approximately 2.5 feet by 2.0 feet with the cash register on the left side behind a plastic partition and food displays on the right side. There were open boxes of candy on the floor in front of the checkout counter making it difficult for customers to reach the counter. A second cash register was located in the pharmacy.
- The checkout counter had one cash register, one POS device, and a scale, but no adding machines, calculators, or optical scanners were visible.
- No food packages, bundles, or case sales were evident and a small number of items were on sale. Unopened cases of drinks did appear to be available for sale.
- No signage was visible advertising bulk purchases and there was no exterior/interior signage for Halal meats.
- Store aisles were narrow and there were cases of product on the floor throughout the business, but the tops had been opened so the items could be sold individually.
- The inventory of staple foods at the time of the visit included: canned meat/poultry/fish, dried/bottled/canned fruit and vegetables, fruit juices, nuts, rice (up to 25 pound bags), Masa flour, corn meal, sugar (up to 25 pound bags), whole wheat flour (up to 50 pound bags), AP flour, bread, baked goods, snacks, cold cereals, baby cereals, baby foods, cooking oils (up to 32.5 pound containers), dry pasta/noodles, baking mixes, canned pasta, and soups.
- Dairy items included: milk, butter/margarine/ghee, packaged cheese, yogurt, ice cream, and infant formula.
- Refrigerated items included eggs and frozen, processed chicken products (patties, nuggets, and kabobs).
- Fresh fruit or vegetables consisted of only two bunches of bananas and three cauliflower heads while frozen vegetables consisted of only five bags of frozen green peas.
- Ineligible items included: household products, paper products, pet products, clothing, party supplies, diapers, charcoal, lighter fluid, Sterno, and pharmacy purchases, while accessory foods included: spices, condiments, un/carbonated drinks, candy, coffee, and tea.
- There were no fresh or frozen meats, no fresh or frozen seafood, minimal frozen processed meats, no frozen processed seafood, a very limited variety/quantity of fresh or frozen produce, a typical selection of canned and packaged staple food items, no deli meats or cheeses, and few expensive food items.

- The store was a WIC vendor and as such the purchases of infant formula, cereals, and baby foods would most likely be made using WIC vouchers, not SNAP benefits, as most SNAP households with infants or small children are WIC participants.
- Signage in the store was in English.
- Most of the items in the store were priced.
- Store hours were confirmed by the reviewer with the cashier during the FNS store visit as being 10:00 AM-10:00 PM daily.

### **APPELLANT'S CONTENTIONS**

In the two responses to the letter of charges, in the request for administrative review, and in the subsequent correspondence, Appellant has stated as its position in the matter the following:

- Ownership was caught by surprise when he received the charge letter as the business has done nothing to violate SNAP regulations. They did not commit trafficking and do not wish to pay a CMP for something they did not do, nor can they afford to pay a CMP of any amount;
- The charge letter identified three separate charges of trafficking; however, based on the definition of trafficking in Section 271.2, there is no evidence whatsoever of trafficking at the business. Further, the charge letter fails to provide the section in US Code that would identify those transactions as constituting trafficking. Title 7 of the US Code that pertains to FNS and SNAP is silent on transactions made within a short time frame, silent on manual key entries, and silent on transactions that are “excessively large”. There is nothing in the regulations which states that such transactions which are itemized in the charge letter constitute “trafficking”. The charge letter is overly broad and does not state the basis of the alleged violations. The transactions listed in the exhibits were legitimate transactions;
- The business is located in a busy section of Brooklyn and is a large ethnic Indian grocery food mart with over 3500 square feet. This is the largest Indian grocery store in this zip code and must be compared to other stores, of which there are virtually none. The store sells ethnic food items and bulk products. EBT sales comprise a small portion of their grocery sales. This is the first alleged violation since the business has been involved in the SNAP program. Customers are largely Pakistani, Indian, and Bangladeshi who shop at the business for ethnic spices and powders, grains, oils, and rice among other items. These cultures typically have large families, cook in large quantities, and come to this shop to purchase such items in bulk. The photos provided show 20 pound bags of basmati rice, 25 pound bags of sugar, 50 pound bags of durum flour, 32 pound containers of vegetable oil, and other bulk items. The business does not have shopping carts because the layout of the store does not permit it, but they do have baskets for customers to use while shopping. The counter space is cramped and sometimes customers ring-up their orders in multiple transactions for their convenience or the convenience of the store clerk who can't see the large, heavy items on the floor that the

customer does not place on the counter. Other times, a customer will purchase some items and then go back and purchase additional items they either forgot or later decided they wanted to buy;

- Many immigrants [sic] report their EBT cards do not work properly because the recipient does not care for the card. The magnetic strip will not work if it comes in contact with oil, some other liquid, or is damaged and the card must be entered manually. These transactions always require the manager on the premises to oversee the transaction so there is additional scrutiny for these manual transactions. All EBT recipients must enter their private PIN to complete a transaction. The business does not engage in any sort of EBT manipulation and also does not extend credit to customers, as many other stores do. The EBT business is such a small part of their business model that they have nothing to gain from trafficking or otherwise manipulating the EBT model. To combat the frequency of manual entries, the store has made a policy to only allow those EBT transactions that are swiped by the cardholder. The store has erected a sign stating this to notify customers and a copy is attached. The store has absolutely nothing to gain from permitting EBT customers to purchase items by manual entry. Therefore, the store has passed the responsibility onto the EBT recipient to ensure their card is working properly;
- Copies of inventory invoices from the past calendar year are enclosed. Invoices from Patel Grocery Inc. show unique products including spices and Indian products. Those from Shata Traders Inc. also show unique Indian spices and products. Best Foods invoices show orders for different types of masala and curry among other items. There are also numerous types of bulk item products which are ordered in large quantities. The sale of bulk items leads to high value transactions both in EBT and other cash and credit card transactions;
- In the event you feel a penalty is appropriate, then ownership requests a trafficking CMP in lieu of permanent disqualification and to work-out a mutually satisfactory installment plan. Ownership denies trafficking, did not benefit from trafficking, personally oversees all aspects of the store's business practices including hiring/firing of employees, and personally trains all employees who handle the cash register. All were trained long before the incident; and,
- Hamdar is an honest business and the owner and managers take integrity very seriously. They are hardworking immigrants who would never engage in any practice that would damage their repudiation in the community. People from all over the area come to Hamdar to shop for their ethnic food needs and for this reason we ask for a determination in their favor.

Appellant submitted three attachments containing invoices, a copy of the manual transaction notice, and 35 photographs through a link to Google as evidence in support of these contentions. No other evidence was submitted in support of Appellant's contentions.

The preceding may represent a summary of Appellant's contentions in this matter, however, in reaching a decision, full attention and consideration has been given to all contentions presented, including any not specifically recapitulated or specifically referenced herein.

## ANALYSIS AND FINDINGS

Government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. Therefore, based on this empirical data, and in the absence of any reasonable explanations for such transaction patterns, a conclusion can be drawn through a preponderance of evidence that the “unusual, irregular, and inexplicable” transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. Nevertheless, transactions having such characteristics are sometimes valid and sufficient evidence that support that they were the result of legitimate purchases of eligible food items is provided. This is why opportunities are afforded to charged retailers to explain the questionable transactions cited and to provide evidence that they are legitimate.

Retailer Operations presented a case that Appellant trafficked SNAP benefits. Each Attachment furnished with the letter of charges represents the questionable and unusual patterns of SNAP transactions indicative of trafficking which were conducted at Appellant’s store during the review period. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

### Multiple Transactions in Unusually Short Time Frames

[7 USC 2018 (b)(7)(e)].

Examples of these transactions include:

[7 USC 2018 (b)(7)(e)]. During the period under review this household conducted only these two transactions at the Appellant business while conducting 39 transactions at 12 other stores that included a super store, three supermarkets, and a variety of larger stores offering ethnic Indian foods and Halal meats. Nine of these 12 other stores accounting for 31 transactions were located in Manhattan. [7 USC 2018 (b)(7)(e)]. The only plausible explanation is that this household was trafficking SNAP benefits for cash.

- [7 USC 2018 (b)(7)(e)]. During the period under review this household conducted only these two transactions at the Appellant business while conducting 38 transactions at 11 other stores that included three super stores, a supermarket, and only one other ethnic Indian grocery store. Ten of these 11 other stores accounting for 36 transactions were located in the Bronx or Manhattan, more than 7.8 miles from Appellant’s location. [7 USC 2018 (b)(7)(e)]. The only plausible explanation is that this household was trafficking SNAP benefits for cash.

Appellant contends the business does not have shopping carts because the layout of the store

does not permit it, but they do have baskets for customers to use while shopping. The counter space is cramped and sometimes customers ring-up their orders in multiple transactions for their convenience or the convenience of the store clerk who can't see the large, heavy items on the floor that the customer does not place on the counter. Other times, a customer will purchase some items and then go back and purchase additional items they either forgot or later decided they wanted to buy.

The SNAP transactions listed in this Attachment are suspicious because they are large transactions being conducted by a specific household in a short period of time at a minimally stocked convenience store. They display characteristics of use inconsistent with the nature and extent of the store's stock and facilities and are indicative of trafficking. The transactions in this Attachment do not contain the characteristics associated with a recipient purchasing a forgotten item right after checking-out or households returning to purchase a forgotten item or two as evidenced by the previous examples. [7 USC 2018 (b)(7)(e)]. For example, mothers may shop and later send a child to the store to pick-up a forgotten item. [7 USC 2018 (b)(7)(e)].

The FNS store visit report shows the business offered a limited stock of SNAP eligible food with no fresh or frozen meats, no fresh or frozen seafood, minimal frozen processed meats, no frozen processed seafood, a very limited variety/quantity of fresh or frozen produce, a typical selection of canned and packaged staple food items, and no deli meats or cheeses. The inventory report and photographs also show while the business did offer some bulk items that quantities of the largest sizes were limited and that there were minimal expensive eligible foods in stock that would account for these large amounts. While the business did stock baby foods, cereals, and formula, but the business also was a WIC vendor and as such the purchases of infant formula, cereals, and baby foods would most likely be made using WIC vouchers, not SNAP benefits, as most SNAP households with infants or small children are WIC participants. The report and photographs also show the store had a very limited checkout counter space with no scanner and no shopping carts in which to transport the large number of items required to make-up these large transaction amounts. With this set-up, it is unlikely such large dollar value transactions could be for actual food purchases and more likely they are trafficking. An analysis of the shopping patterns for all of the 23 households listed in this Attachment shows that all are regularly shopping at a variety of larger stores, including an assortment of super stores, supermarkets, and larger ethnic Indian food stores located both nearby and at a distance from Appellant's location indicating that most, if not all, of the households shopping at Hamdar Inc. have ready access to transportation and would therefore have no need to shop at a minimally stocked convenience store. This analysis also showed there is a medium grocery store and a small grocery store located within yards of the Appellant business offering the same types of ethnic Indian products as well as fresh Halal meats and fresh produce. There are additional ethnic Indian grocery stores located within 0.3 miles from Appellant's location. While Hamdar Inc. offers a limited variety and quantity of staple food items and ethnic foods, these other larger SNAP retailers located in proximity to Appellant's business offer the same type products, including bulk items, with greater variety and at lower prices. Therefore, this store has nothing to attract SNAP customers as there are no special or custom services offered.

There may be legitimate reasons why a SNAP recipient might return to a store during a short period of time, but the examples in Attachment 1 indicate a series of SNAP purchases that total to large dollar amounts. The record also shows that almost all of the households cited in this Attachment shop at a variety of other stores, primarily supermarkets and super stores, often located at a distance from Appellant's location. 7 USC 2018 (b)(7)(e).

### **Excessive Numbers of Manual Key-entered EBT Transactions**

This Attachment documents 148 manual key-entered SNAP transactions conducted by 47 different households occurring at Appellant's location which is an unusually high number. During the period under review, there were 4,668 EBT transactions conducted at Hamdar Inc. 7 USC 2018 (b)(7)(e).

Appellant contends that many immigrants [sic] report their EBT cards do not work properly because the recipient does not care for the card. The magnetic strip will not work if it comes in contact with oil, some other liquid, or is damaged and the card must be entered manually. These transactions always require the manager on the premises to oversee the transaction so there is additional scrutiny for these manual transactions. All EBT recipients must enter their private PIN to complete a transaction. The business does not engage in any sort of EBT manipulation and also does not extend credit to customers, as many other stores do. The EBT business is such a small part of their business model that they have nothing to gain from trafficking or otherwise manipulating the EBT model. To combat the frequency of manual entries, the store has made a policy to only allow those EBT transactions that are swiped by the cardholder. The store has also erected a sign stating this to notify customers and a copy was submitted in Appellant's correspondence dated of September 6, 2016. The store has absolutely nothing to gain from permitting EBT customers to purchase items by manual entry. Therefore, the store has passed the responsibility onto the EBT recipient to ensure their card is working properly.

The "SNAP Training Guide for Retailers" that is provided to all retailers upon their authorization, and is available through the FNS retailer web site clearly states that it is a SNAP violation for store owners or operators to refuse to process an EBT transaction if the recipient has their EBT card and knows the PIN.

Appellant provided no documentation or explanation to support the legitimacy of the listed transactions in this Attachment. Manual transactions are those in which the magnetic strip on the back of the EBT card is not being read by the store's POS device and the clerk must manually key enter the EBT card number. When the magnetic strip on an EBT card fails, it can no longer be swiped and replacement EBT cards contain different identification numbers. On-site investigations into trafficking at retailers have found it is not uncommon for retailers to have the SNAP recipient's PIN and EBT card number in order to facilitate trafficking SNAP benefits in exchange for cash without the need for the recipient to be physically present. The retailer enters the EBT card number manually as the recipient has the actual EBT card and then

enters the PIN. A review of other EBT transactions on the dates of the manual transactions show that Appellant’s POS device was functioning properly as there were swipe transactions immediately before and after the manual transactions. An analysis of the transaction data in this Attachment identified transactions by at least three households which fit this pattern and are suggestive of trafficking.

- [7 USC 2018 (b)(7)(e)]. This household conducted only this single transaction at the Appellant business and the dollar amount made it the largest purchase made by this household during the period under review even though the household regularly shopped at larger stores including three supermarkets. It is also unusual that this household shopped at no other SNAP retailers carrying ethnic foods.

- [7 USC 2018 (b)(7)(e)].

- [7 USC 2018 (b)(7)(e)].

- [7 USC 2018 (b)(7)(e)]

[7 USC 2018 (b)(7)(e)]. It is also a SNAP violation for store employees to know a recipient’s PIN number.

### High Dollar Value Transactions

[7 USC 2018 (b)(7)(e)].

The record shows that within a one mile radius of Appellant’s store there are 248 SNAP

authorized retailers including: eight super stores, 11 supermarkets, 24 combination grocery stores, nine large grocery stores, 33 medium grocery stores, 82 small grocery stores, 64 convenience stores, two fruit and vegetable specialty stores, four meat specialty stores, seven seafood specialty stores, and four bakeries. There are a variety of larger ethnic stores specializing in Indian foods with many also offering Halal meats located within blocks of the Appellant business including a medium grocery store with Halal meats located just 52 yards away and three small grocery stores with Halal meats located within 220 yards. The evidence under review shows that SNAP households shopping at the Appellant business were also shopping at other nearby stores, as well as at full-line supermarkets, super stores, and larger ethnic Indian food stores located nearby as well as at a distance from Appellant's location that offered a greater variety and quantity of SNAP eligible foods items for better or comparable prices than the customers can find at the Appellant business. The large dollar transactions remain questionable when considering the proximity of these other SNAP authorized stores. Based on these shopping patterns, transportation does not appear to be an issue for these households. 7 USC 2018

(b)(7)(e):

- During the months of December 2015 and January 2016, household 7 U.S.C. 2018 (b)(6) & (b)(7)(c) conducted no transactions at the Appellant business while conducting 42 transactions at nearby stores that included 11 transactions at a small grocery store specializing in Indian foods and Halal meats located 0.13 miles from Appellant's location and five transactions at a super store located 0.7 miles away. It also conducted no transactions at the Appellant business during the month of May 2016. 7 USC 2018 (b)(7)(e). During the period under review, this household conducted six transactions at the Appellant business while conducting 131 transactions at 18 other SNAP retailers that included 19 transactions at three super stores and two supermarkets, 46 transactions at the nearby small grocery store, and 31 transactions at a medium grocery store specializing in international foods, fresh produce, and Halal meats located 0.44 miles from Appellant's location; this store was also a WIC vendor. This household clearly was not a regular customer at the Appellant business preferring to shop at much larger ethnic grocers as well as at super stores and supermarkets that would carry the same ethnic and mainstream American foods while offering a greater variety and quantity at a reduced price. It is inexplicable why this household would transact such large dollar amounts at the Appellant business unless it was trafficking.
- 7 USC 2018 (b)(7)(e). This pattern of conducting large transactions at the Appellant business followed by comparable transactions at much larger grocery stores both nearby and at a distance that would offer a better selection of foods at lower prices continued throughout the period under review. During the period under review, this household conducted 21 transactions at the Appellant business while conducting 275 transactions at 15 other SNAP retailers that included 81 transactions at three super stores and three supermarkets, 97 transactions at the small Indian grocery store 0.33 miles away, and 59 transactions at a supermarket located 0.43 miles away. There was a total of 205 transactions at six stores located in a cluster 0.33-0.51 miles away indicating this area is likely where the household resides. It is inexplicable and suggestive of trafficking that a household that shopped almost exclusively at super stores, supermarkets, and larger stores all located more than 0.27 miles away from Appellant's location would conduct one to three sizeable transactions each

month at the Appellant business before and/or after conducting comparable or smaller transactions at larger stores when they would offer a greater variety and quantity of eligible food items at lower prices or why it would travel away from its regular shopping area past many larger stores to do so. The only plausible explanation for this suspicious shopping pattern is that this household was trafficking.

The SNAP transactions noted in this Attachment are not presumed to be trafficking because they exceed a set dollar amount; they are questionable because they are inconsistent for this type of store and the store's stock. The examples cited above clearly show that households in this Attachment were regularly shopping at much larger stores and conducting transactions of large dollar amounts, yet were conducting comparable or higher dollar value transactions at Appellant's smaller and nominally stocked business. Since Appellant's business is a minimally stocked convenience store offering few expensive foods, these patterns are deemed to be suspicious. As previously stated, government analyses of stores caught in trafficking violations during on-site investigations have found that transactions involving trafficking consistently display particular characteristics or patterns. These patterns include, in part, those cited in the letter of charges. As patterns of unusual transactions appear across multiple Attachments, the case of trafficking becomes more convincing.

The evidence shows that the difference in the total SNAP transaction dollar volume, the total SNAP transaction count, and the average SNAP transaction amount for Kings County convenience stores during the review months and at Hamdar Inc. was significant. 7 USC 2018 (b)(7)(e). For comparison purposes, the transaction data for the four convenience stores nearest to Appellant's location that were accepting SNAP benefits in all months of the period under review (two of which offer ethnic Indian foods) are included in this table as is the data for the small and medium grocery stores located just yards away from the Appellant business that offer ethnic Indian foods and Halal Meats, and for the Kings County small and medium grocery store averages; the data for these other stores shows similar differences. As evident in the chart below, the average transaction dollar amount and the total SNAP transaction count at the nearby small and medium ethnic Indian foods/Halal meats grocery stores are significantly less than the corresponding amounts at the Appellant business. None of Appellant's contentions explain these unusual and suspicious differences.

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e)

7 USC 2018 (b)(7)(e)

The evidence also shows that this store had irregular data as compared to like type convenience stores in Kings County for the same time frame as seen in the table and chart below. 7 USC 2018

**(b)(7)(e)**. The lower ranges are typically where the vast majority of convenience store transactions occur. There also were an unusual increase in the number of transactions at certain dollar points (in **BOLD** below) that are irregular and suggestive of trafficking as legitimate transactions approximate random numbers and therefore any dollar/cent value has approximately the same probability of occurring as any other. These unusual peaks have not been explained by Appellant.

**7 USC 2018 (b)(7)(e)**

**7 USC 2018 (b)(7)(e)**

Appellant contends the business is located in a busy section of Brooklyn and is a large ethnic Indian grocery food mart with over 3500 square feet and is the largest Indian grocery store in this zip code and must be compared to other stores, of which there are virtually none. The store sells ethnic food items and bulk products. EBT sales comprise a small portion of their grocery sales. The excessively large transactions in this Attachment are because customers are largely Pakistani, Indian, and Bangladeshi who shop at the business for ethnic spices and powders, grains, oils, and rice among other items. These cultures typically have large families, cook in large quantities, and come to this shop to purchase such items in bulk. The photos provided show 20 pound bags of basmati rice, 25 pound bags of sugar, 50 pound bags of durum flour, 32 pound containers of vegetable oil, and other bulk items. Appellant submitted three attachments containing copies of inventory invoices from the past calendar year and 35 photographs of store inventory in support of these contentions. Invoices from Patel Grocery Inc. show unique products including spices and Indian products. Those from Shata Traders Inc. also show unique Indian spices and products. Best Foods invoices show orders for different types of masala and curry among other items. There are also numerous types of bulk item products which are ordered in large quantities. The sale of bulk items leads to high value transactions both in EBT and other cash and credit card transactions;

It is not disputed that the Appellant business is located in a busy section of Brooklyn. However, the FNS store visit shows that while it offered a limited assortment of the dried vegetables, spices, and snack items typically found in Indian markets as well as a limited number of bulk items such as whole wheat flour, flour, sugar, rice, and cooking oils found in ethnic Indian food stores, it also offered those mainstream American items typically found in convenience stores. Additionally, there is a medium grocery store offering ethnic Indian foods and Halal meats that is located just yards from Appellant's location as well as three small grocery stores also offering ethnic Indian foods/Halal meats that are located within 0.13 miles of the Appellant business that are comparably sized. A review of the property through OpenDataNY.com shows that the square footage for the entire physical location of the Appellant business is only 2,500 square feet and as evidenced by the FNS store visit report and photographs, the business offers many nonfood items and also has a retail pharmacy within the property thereby disputing Appellant's contentions regarding the unique size of Hamdar Inc. and the lack of comparable businesses.

The majority of the invoices provided by Appellant to validate the large inventory purchases in

this Attachment were for purchases that occurred outside of the period under review and therefore would have no bearing on the high dollar transactions under review. Specifically, regarding the invoices provided, there were only five relevant to the review period that included four invoices from Patel Grocery Inc. and one invoice from Shata Traders, Inc. The remaining invoices were outside of the review period and were not included in the analysis. The sales receipts were also dated outside of the review period and contained no identifying information to substantiate that the purchases were made by and/or shipped to Hamdar Inc. The receipts from Jetro Cash & Carry in Canarsie, New York show the purchases were made by a [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] for the [7 U.S.C. 2018 (b)(6) & (b)(7)(c)] business located at [7 U.S.C. 2018 (b)(6) & (b)(7)(c)]; this business is a deli grocery news store. The Retailer Operations Division staff reviewed the remaining five invoices and eliminated those purchases that were for items sold under WIC or that were for items ineligible for purchase using SNAP benefits such as hair oils.

[7 USC 2018 (b)(7)(e)].

Information obtained during the FNS store visit on May 20, 2016, shows that Hamdar Inc. had a limited variety and quantity of SNAP eligible food items and many ineligible items. While the business did offer bulk items such as whole wheat flour, flour, sugar, rice, and cooking oils, the quantities of the largest sizes were minimal. This was also substantiated by the invoices provided that showed bulk items in the 10 -20 pound ranges were most commonly ordered. The store offered no fresh or frozen meats, no fresh or frozen seafood, minimal frozen processed meats, no frozen processed seafood, a very limited variety/quantity of fresh or frozen produce, a typical selection of canned and packaged staple food items, no deli meats or cheeses, and few expensive food items. The store was a WIC vendor and as such the purchases of infant formula, cereals, and baby foods would most likely be made using WIC vouchers, not SNAP benefits, as most SNAP households with infants or small children are WIC participants. As evidenced by the inventory report and photographs from the FNS store visit, the business did not have sufficient eligible food stock to support the volume of SNAP purchases. There is no apparent legitimate reason for the high transaction amounts at Appellant's store given the stock of staple foods and the fact that: household products, paper products, pet products, clothing, party supplies, diapers, charcoal, lighter fluid, Sterno, and pharmacy purchases are not eligible for purchase with SNAP benefits. No itemized cash register and EBT receipts for the period under review were furnished to document the legitimacy of these excessively large transactions and insufficient evidence was provided of SNAP eligible store stock via receipts of products taken into inventory for the relevant review months. Additionally, Appellant's store did not have shopping carts or a scanner thereby making it difficult to facilitate the great quantities of eligible food items required to make up these large dollar transactions. Therefore, it is improbable that the food items purchased in these high dollar amounts could be carried to the register without the use of carts and more likely the amounts were contrived. Based on this discussion, Appellant did not provide adequate evidence to support the legitimacy of the excessively large transactions in this Attachment.

It was also noted that SNAP redemptions at Appellant's business dropped significantly following receipt of the charge letter on June 24, 2016. [7 USC 2018 (b)(7)(e)].

## Other Contentions

Appellant contends that Hamdar Inc. is an honest business and the owner and managers take integrity very seriously and deny trafficking. They are hardworking immigrants who would never engage in any practice that would damage their repudiation in the community. People from all over the area come to Hamdar Inc. to shop for their ethnic food needs and for this reason we ask for a determination in their favor. Ownership was caught by surprise when he received the charge letter as the business has done nothing to violate SNAP regulations. This is the first alleged violation since the business has been involved in the SNAP program. Appellant also contends the charge letter identified three separate charges of trafficking; however, based on the definition of trafficking in Section 271.2, there is no evidence whatsoever of trafficking at the business. Further, the charge letter fails to provide the section in U.S. Code that would identify those transactions as constituting trafficking. Title 7 of the U.S. Code that pertains to FNS and SNAP is silent on transactions made within a short time frame, silent on manual key entries, and silent on transactions that are “excessively large”. There is nothing in the regulations which states that such transactions which are itemized in the charge letter constitute “trafficking”. The charge letter is overly broad and does not state the basis of the alleged violations. The transactions listed in the exhibits were legitimate transactions;

The results of the analysis of shopping patterns for households contained in these Attachments show that the vast majority of these households were shopping at a variety of larger mainstream and ethnic grocery stores, including many super stores and supermarkets, located both nearby and at a distance from Appellant’s location during the review period. Many of these households, including some of the ones cited previously as examples, shopped at the Appellant business less than 10 times during the review period showing that they were not regular customers and some households did not shop at any other ethnic stores suggesting that what they were looking for at the Appellant business was not a recurring source for imported Indian foods, but a place to be able to exchange their SNAP benefits for cash on an as needed basis. There were also households that only shopped at stores located at a distance from Appellant’s location thus indicating that they did not live nearby and were driving miles away from their regular shopping areas, past dozens of larger stores, including larger ethnic foods stores that would have offered a greater variety and quantity of the same ethnic foods at lower prices, to shop at Appellant’s convenience store. Appellant’s explanations do not adequately explain the suspicious transactions conducted by these households leaving trafficking as the most probable explanation.

Regarding Appellant’s denial of violations, this review encompasses and documents the examination of the primary and relevant information in this case, the purpose of which is to determine whether Appellant demonstrates, by a preponderance of the evidence, that the disqualification should be reversed. In this case, therefore, if Appellant demonstrates by a preponderance of the evidence that it did not engage in trafficking with SNAP benefits, then such transactions will be considered legitimate and the disqualification reversed. If this is not demonstrated, the case is to be sustained. Assertions that the firm has not violated program rules, by themselves and without supporting evidence and rationale, do not constitute valid grounds for dismissal of the current charges of violations or for mitigating their impact.

Additionally, a record of participation in SNAP with no previously documented instance of violations does not constitute valid grounds for dismissal of the current charges of violations or for mitigating the impact of those charges. It is important to clarify for the record that the purpose of this review is to either validate or to invalidate the earlier decision of the Retailer Operations Division. This review is limited to what circumstances were at the basis of the Retailer Operations Division action at the time such action was made. It is noted for the record that Appellant business was sanctioned in 2011 and 2015 for State Agency WIC violations and received a financial penalty thereby questioning the level of seriousness of ownership's integrity as well as his reluctance to not engage in any practice that would damage their reputation.

SNAP regulations at 7 CFR § 271.2, define trafficking as, "The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits . . . for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone . . . ." In response to the specificity of charges, the charge letter met all statutory criteria described in 7 CFR 278.6(a). SNAP regulations at 7 CFR § 278.6(a) clearly state, in part, that "FNS may disqualify any authorized retail food store . . . if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, evidence obtained through a transaction report under an *electronic benefit transfer system* . . . ." (Emphasis added). In the present case, the data presented in the Attachments is solely based on the SNAP electronic benefit transfer transactions conducted at the Hamdar Inc. during the period under review. 7 USC 2018 (b)(7)(e). All of the transactions were then reviewed and analyzed by the Retailer Operations Division staff before the decision was made to issue a charge letter. 7 USC 2018 (b)(7)(e). There are like type stores whose transaction data does not form these suspicious patterns and are therefore not at risk of disqualification for trafficking.

Based on this empirical data, and in the absence of sufficient evidence for the legitimacy of such transaction patterns, a conclusion can be drawn, through a preponderance of evidence that the "unusual, irregular, and inexplicable" transactions and patterns cited in the letter of charges evidence trafficking as the most likely explanation. The Retailer Operations Division determined that Appellant's contentions did not outweigh the evidence that the store was trafficking and concluded, through a preponderance of evidence, that trafficking is the most probable explanation for the questionable transactions listed in the charge letter Attachments.

It is herein determined that Appellant has not provided a preponderance of evidence demonstrating that the transactions contained in the charge letter were more likely due to eligible food sales than not. Under review, the evidence more substantially supports a conclusion that the transaction activity in the charge letter Attachments was due primarily to trafficking in SNAP benefits.

#### **CIVIL MONEY PENALTY**

A CMP for hardship to SNAP households may not be imposed in lieu of a permanent disqualification as specified in SNAP regulations at 7 CFR § 278.6(f). Trafficking is a permanent disqualification so Appellant is not eligible for a hardship CMP. Additionally, there are 248 SNAP authorized stores located within a one mile radius of Appellant's business as well as many grocery stores in the immediate area carrying the same type of ethnic products including a medium grocery store located approximately 50 yards away and three small grocery stores located within approximately 220 yards of Appellant's location. The many nearby stores appear readily accessible to SNAP recipients and offer a variety of staple and ethnic foods comparable to, or better than, those offered by Appellant. Appellant does not carry any unique items or foods that cannot be found at other stores. Some degree of inconvenience to SNAP benefit users is inherent in the disqualification from SNAP of any participating food store as the normal shopping pattern of such SNAP benefit holders may be altered.

To be considered eligible for a trafficking CMP a firm must establish, by substantial evidence, its fulfillment of each of the following criteria:

- Criterion 1: The firm shall have developed an effective compliance policy as specified in Section 278.6(i)(1).
- Criterion 2: The firm shall establish that both its compliance policy and program were in operation at the location where the violation(s) occurred prior to the occurrence of violations cited in the charge letter sent to the firm.
- Criterion 3: The firm had developed and instituted an effective personnel training program as specified in Section 278.6(i)(2).
- Criterion 4: Firm ownership was not aware of, did not approve, did not benefit from, or was not in any way involved in the conduct or approval of trafficking violations. Or it is the first occasion in which a member of firm management was aware of, approved, benefited from, or was involved in the conduct of any trafficking violations by the firm.

SNAP regulations are explicit in what constitutes substantial evidence. Specifically, 7 CFR § 278.6(i)(2) states in relevant part, "As specified in Criterion 3 above, in determining whether a firm has established an effective policy to prevent violations, FNS shall consider *written and dated statements of firm policy* which reflect a commitment to ensure that the firm is operated in a manner consistent with this part 278 of current FNS regulations and current FSP policy on the proper acceptance and handling of food coupons." This section goes on to state, "As required by Criterion 2, such policy statements shall be considered only if documentation is supplied which establishes that the policy statements were provided to the violating employee(s) prior to the commission of the violation." This section further states, "A firm which seeks a civil money penalty in lieu of permanent disqualification *shall document* its training activity by submitting to FNS its *dated training curricula and records of dates training sessions were conducted...*" (Emphasis added). No documentation that Appellant met these criteria was advanced by Appellant during the specified time frame as required by § 278.6(i) to be eligible for a trafficking CMP. As such, Retailer Operations determined that Appellant was not eligible for a trafficking CMP in lieu of permanent disqualification.

## CONCLUSION

The Retailer Operations Division has presented a case that Appellant has likely trafficked in SNAP benefits. The Retailer Operations Division’s analysis of Appellant’s EBT transaction record was the primary basis for its determination to permanently disqualify Appellant. This data provided substantial evidence that the questionable transactions during the review period had characteristics that are consistent with trafficking violations in SNAP benefits. This is evidenced by: the suspicious patterns in three Attachments of EBT transaction data, the inadequacy of the store’s staple food stock as observed during the store visit to support large transactions in short time frames, the lack of adequate evidence for customer spending habits given that there are other SNAP authorized stores located within proximity to Appellant that likely offer a greater selection of eligible food items at competitive prices, and the irregular SNAP transaction data of Appellant as compared to other like type stores in the state and county.

The retailer has not provided sufficient evidence to rebut the case that Appellant most likely trafficked in SNAP benefits. Therefore, based on a review of all of the evidence in this case, it is more likely true than not true that program violations did in fact occur as charged by the Retailer Operations Division. Based on the discussion above, the determination to impose a permanent disqualification against Appellant is sustained. Furthermore, Retailer Operations properly determined that Appellant was not eligible for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations.

#### **RIGHTS AND REMEDIES**

Applicable rights to a judicial review of this decision are set forth in 7 U.S.C. § 2023 and 7 CFR § 279.7. If a judicial review is desired, the complaint must be filed in the U.S. District Court for the district in which Appellant’s owner resides, is engaged in business, or in any court of record of the State having competent jurisdiction. This complaint, naming the United States as the defendant, must be filed within thirty (30) days of receipt of this decision.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If such a request is received, FNS will seek to protect, to the extent provided by law, personal information that if released could constitute an unwarranted invasion of privacy.

October 25, 2016

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ROBERT T. DEEGAN  
ADMINISTRATIVE REVIEW OFFICER

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DATE